

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4   ANGELO SILETTI,

5                   Plaintiff

6           v.

7   NCO FINANCIAL SYSTEMS, INC.,

8                   Defendant

)  
)  
)  
)   **Case No.:**

)  
)   **COMPLAINT AND DEMAND FOR**  
)   **JURY TRIAL**

)  
)   **(Unlawful Debt Collection Practices)**

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10                                   **COMPLAINT**

11           ANGELO SILETTI ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
12   alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

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14                                   **INTRODUCTION**

15           1.     Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15  
16   U.S.C. § 1692 *et seq.* ("FDCPA").

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18                                   **JURISDICTION AND VENUE**

19           2.     Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
20   that such actions may be brought and heard before "any appropriate United States district court  
21   without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original  
22   jurisdiction of all civil actions arising under the laws of the United States.

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24           3.     Defendant conducts business and has an office in the Commonwealth of  
25   Pennsylvania and therefore, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

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4 **PARTIES**

5 6. Plaintiff is a natural person residing in Brick Town, New Jersey, 08723.

6 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7 8. Defendant is a national debt collection company with corporate headquarters  
8 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
10 and repeatedly contacted Plaintiff in an attempt to collect a debt.

11 10. Defendant acted through its agents, employees, officers, members, directors,  
12 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

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15 **PRELIMINARY STATEMENT**

16 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
17 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
18 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
19 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
20 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
21 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
22 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
23 unconscionable conduct, both generally and in a specific list of disapproved practices.

1        12. In particular, the FDCPA broadly enumerates several practices considered  
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
6 collector may not use any false, deceptive, or misleading representation or means in connection  
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
12 connection with the collection of a debt.  
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14        13. In enacting the FDCPA, the United States Congress found that “[t]here is  
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
18 additionally found existing laws and procedures for redressing debt collection injuries to be  
19 inadequate to protect consumers. 15 U.S.C. § 1692b.  
20

21        14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
24 collection practices are not competitively disadvantaged, and to promote consistent State action  
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

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**FACTUAL ALLEGATIONS**

15. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff owed to Bank of America in the amount of \$40.00.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. Beginning in or around March 2011 and continuing until May 2011, Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.

18. Defendant, its employees and servants harassed Plaintiff by making continuous calls to Plaintiff's home telephone number.

19. Plaintiff advised Defendant that he was on social security income, had limited funds, and requested they stop calling as their calls were harassing.

20. Frustrated by Defendant's frequent calls, Plaintiff eventually sent Defendant a check for \$40.00.

21. Defendant's actions in attempting to collect the alleged debt were harassing, abusive and highly deceptive.

**CONSTRUCTION OF APPLICABLE LAW**

22. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233

1 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
2 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

3 23. The FDCPA is a remedial statute, and therefore must be construed liberally in  
4 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
5 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
6 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
7 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
8 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
9 2002).

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11 24. The FDCPA is to be interpreted in accordance with the "least sophisticated"  
12 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
13 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
14 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
15 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
16 and the fact that a false statement may be obviously false to those who are trained and  
17 experienced does not change its character, nor take away its power to deceive others less  
18 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
19 ensures protection of all consumers, even naive and trusting, against deceptive collection  
20 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
21 collection notices. Clomon, 988 F. 2d at 1318.  
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24 **COUNT I**  
25 **DEFENDANT VIOLATED**  
**THE FAIR DEBT COLLECTION PRACTICES ACT**

1           25. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
2 more of the following ways:

- 3           a. Defendant violated of the FDCPA generally;
- 4           b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in  
5 connection with the collection of an alleged debt;
- 6           c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
7 telephone to ring repeatedly or continuously with the intent to harass, annoy  
8 or abuse Plaintiff;
- 9           d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or  
10 misleading representations or means in connection with the collection of a  
11 debt;
- 12           e. Defendant violated § 1692e(10) of the FDCPA by using false representations  
13 or deceptive means to collect or attempt to collect a debt;
- 14           f. Defendant violated § 1692f of the FDCPA by using unfair and  
15 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 16           g. Defendant violated § 1692g of the FDCPA by failing to send written  
17 notification, within five (5) days after its initial communication with Plaintiff,  
18 advising Plaintiff of her rights to dispute the debt or request verification of the  
19 debt;
- 20           h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
21 and failed to comply with the FDCPA.
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25       WHEREFORE, Plaintiff, ANGELO SILLETTI, respectfully pray for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, ANGELO SILLETTI, demands a jury trial in this case.

DATED: 05/20/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C..

By: 

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